

EXHIBIT 20

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | | |
|-------------------------------|---|-----------------|
| HUNTERS CAPITAL, LLC, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | 20-cv-00983-TSZ |
| |) | |
| City of Seattle, |) | |
| |) | |
| Defendant. |) | |

VIDEO-RECORDED VIDEOCONFERENCE DEPOSITION UPON ORAL
EXAMINATION

OF

BRANDON LEATHA

ATTENDANCE OF ALL PARTICIPANTS VIA ZOOM VIDEO CONFERENCE

DATE: September 16th, 2022

REPORTED BY: Alisha Natasha Conley, RSR, CCR, 22019322

1 the user must select settings, then messages, then "keep
2 messages," and change the setting from forever to
3 something other than forever. Is that -- is that your
4 testimony?

5 A. That is the primary mechanism for making those
6 settings changes. In my experience, there -- there may
7 be other ways to do that such as the use of mobile
8 device management software.

9 Q. Okay. So -- so it is not the -- strike that.

10 So there are other ways that the retention
11 setting may be changed from 30 -- from forever to
12 something else on an iPhone other than going into the
13 settings, then messages, then keep messages menu and
14 changing the setting there, right?

15 A. That's correct.

16 Q. Okay. You mentioned mobile device management.

17 Are there any other ways in which the retention setting
18 can be changed that you're aware of?

19 A. One that comes to mind would be changing the
20 setting on a different device that is connected to the
21 same iCloud account and synchronizing with the same pool
22 of messages.

23 Q. And so in that instance, a person could change
24 the retention setting on one phone and it will change
25 the retention setting on other phones synched to the

1 same Apple ID; is that right?

2 A. That's correct. It's -- it's a little more
3 complicated than that because Apple does not typically
4 allow two phones with cellular service to connect to the
5 same iMessage account, so there are ways to get around
6 that, but that's not -- they typically support one phone
7 and then multiple other devices, including Macs or
8 iPads. You can use devices without sim cards which will
9 allow that, but it's -- I would not suggest typical.

10 Q. Okay. And wouldn't you also be able to do that
11 if one of the phones were linked to cellular service but
12 the other was not but did have Wi-Fi capabilities?

13 A. Yes. That -- that theoretically could -- could
14 be one mechanism for changing the retention settings on
15 the phone.

16 Q. Would that also change the retention settings
17 on a -- on a non-phone Apple device that was linked to
18 the same Apple ID, like an iPad?

19 A. Each -- each of these scenarios are complex
20 because of -- of many reasons, but one is these
21 scenarios are not well documented by Apple, so it
22 requires testing. In my testing, I was able to -- if --
23 if -- if the device that was linked to the iCloud
24 account was an iPad and an iPhone, both with Messages in
25 iCloud enabled, changing the setting on one would change

1 Q. Okay. And -- but you didn't do independent
2 testing to determine whether other configuration
3 changes, other than the ones that Mr. Faulkner
4 identified, could also cause the KeepMessagesVersionID
5 to increment; is that right?

6 A. I'm aware of other changes. I did not do
7 specific testing related to it.

8 Q. Okay. And what other settings are you aware of
9 that cause it to increment?

10 A. Changing the -- well, let me amend my last
11 statement.

12 I did specific testing as it relates to
13 changing the setting from forever to 30 days, and I
14 tried many different scenarios such as before
15 confirming, I would change from forever to one year to
16 30 and then confirm to see if that incremented by 2 or
17 by only 1. In that scenario I just described, in my
18 experience I only found it change by one, but I was able
19 to get the setting -- I'm sorry, the version ID to
20 change by multiple values very rapidly by changing the
21 setting back and forth.

22 So that -- there are many different scenarios
23 that I tested in an effort to get the
24 KeepMessageVersionID to increment by more than 1 in a
25 single event, and I did have an example that was able to

1 how the changes in the operating system effects the end
2 user -- new features, where buttons are placed, things
3 like that. There are more detailed notes that are
4 sometimes available to software developers and those
5 that are developing applications for Apple devices, and
6 to the extent that a change in the operating system
7 impacts an application developer, you know, we can
8 inspect those same release notes and see if they have
9 any bearing on -- on our forensic work.

10 But it does not frequently inform things such
11 as the backup. The backup information, you know --
12 typically that information comes from other forensic
13 investigators, as well the software manufacturer who
14 makes the software that -- that I use, that -- that
15 Crypsis uses, and that's the ElcomSoft software.

16 Q. And for something like the
17 KeepMessagesVersionID artifact, does Apple release a
18 sheet that describes every different manner or setting
19 on the phone that could cause that to iterate one more
20 number?

21 A. Not to my knowledge.

22 Q. Do they do that for any of the settings or
23 artifacts that you would consider to be relevant for the
24 analysis you provided in this case?

25 MR. REILLY-BATES: Object to the form. Vague.

1 that was factory reset in August and/or September. So
2 would -- how would you find that artifact outside of --
3 of that phone's image?

4 A. They are transferred with the Quick Start
5 method to the new phone that we have extractions for.

6 Q. And was there any artifact in the
7 CloudKitSyncingEnabled -- what we call the data spot on
8 the iPhone 11? Sorry. In the CloudKitSyncingEnabled
9 key. Is that what it's called, a key?

10 A. Yeah, key. That's correct.

11 I would need to go back and inspect this
12 hypothetical in the forensic evidence. I do not have
13 sufficient information here in my report to confirm
14 that, but my recollection is that would -- that scenario
15 would not have occurred based on that artifact and the
16 fact that the message retention version would have
17 changed as well through the process of enabling the
18 Message in any iCloud.

19 Q. But you've -- you've confirmed that you are --
20 have -- have not observed the artifact depicting when
21 the KeepMessagesVersionID changed to 2 and 3 and how
22 that occurred, correct?

23 A. That's correct.

24 Q. So if the -- if -- if Mr. Arhu had enabled
25 Messages in iCloud on July 9th, that would have

1 counteracted the disable and delete that was in place as
2 of the evening of July 4th, right?

3 MR. REILLY-BATES: Object to the form.
4 Incomplete hypothetical. Calls for speculation.

5 A. I would need to review the forensic evidence to
6 confirm whether that hypothetical works. It's -- it's a
7 complex hypothetical, and sitting here today, I can't
8 answer that one way or the other.

9 BY MR. CRAMER:

10 Q. Okay. Well, let's take it outside of -- of
11 what happened in -- in July.

12 If -- if you were to -- if you were to select
13 disable and delete on an iPhone, and then shortly
14 thereafter, re-select Messages in iCloud, wouldn't that
15 re-sync the cloud and the device and undo the effects of
16 the un-syncing that you had done just before?

17 MR. REILLY-BATES: Object to the form.
18 Incomplete hypothetical. Calls for speculation.

19 A. My understanding is that it can be re-synced
20 within the 30 days and that would negate the prior
21 action. I would need to do further testing to see
22 whether that hypothetical would be plausible in this
23 scenario.

24 BY MR. CRAMER:

25 Q. We talked earlier, I think, in generalities

1 restoration of the phone.

2 Q. Okay. Correct. But are you -- have you seen
3 any testimony in the case or other evidence in the case
4 indicating the person who changed the settings on any
5 phone from -- on the Mayor's phone from forever to
6 30 days?

7 A. I have not.

8 Q. And do the forensics that you have -- the
9 forensic artifacts that you have reviewed, are you able
10 to tell from reviewing those artifacts who would have
11 made any such changes?

12 A. No.

13 Q. Okay. And you say in -- on page 14 that -- you
14 make reference to the 30-day retention setting being
15 turned off on approximately June -- July 25th, 2020. Do
16 you see that in the middle of the page?

17 A. I do.

18 Q. Did you analyze when the 30-day retention
19 setting may have been turned off, or are you -- did you
20 mainly rely on Mr. Faulkner's report in that regard?

21 MR. REILLY-BATES: Object to the form. Asked
22 and answered.

23 A. To the extent that I relied on any information
24 from Mr. Faulkner's report, I independently inspected
25 the evidence and verified that in this instance it is a

1 deleted by the 30-day retention setting.

2 And the results of my analysis of that chat
3 table are outlined, not as it -- not as it relates to
4 account of messages, but rather the issues or
5 circumstances that are unclear as to what phone was
6 provided and what phone numbers it was used with.

7 Q. Can you direct me to what you're -- you're
8 describing?

9 A. Yes. At the bottom of page 19.

10 Q. Right. But -- okay. So I see the reference to
11 chat table and the sms.db database, but does -- did your
12 analysis of the chat tables lead you to conclude whether
13 text messages were deleted as a result of the 30-day
14 setting or manual deletion by conversation thread?

15 A. I did not perform a -- an assessment and put
16 the results in my report here, but, again, as I -- I
17 testified earlier, I did see chat records which means
18 that it was either manual deletion at the message level
19 or the result of the 30-day retention setting and would
20 not reflect the deletion of entire chat threads at one
21 time. But it was not a -- an exhaustive analysis, so
22 it's not as if I could say that that was the case with
23 all messages.

24 Q. And given your opinion that 15,843 messages
25 were deleted, would it be fair to infer that it was more

1 likely then to be the 30-day setting than an individual
2 deletion of 15,843 individual messages?

3 MR. REILLY-BATES: Objection. Object to the
4 form. Calls for speculation.

5 A. Yes. I would agree, and that's for two
6 reasons. One is that the messages were restored --
7 thousand messages were restored when the phone was
8 synchronized with his iCloud account and then
9 subsequently deleted, so that would indicate that it was
10 likely some sort of bulk deletion activity, rather than
11 individually deleting messages over time.

12 And if that were to occur and the fact that
13 many of the chat entries still remain that it -- it is
14 the most likely explanation that it was the 30-day
15 retention setting that -- that deleted those messages.

16 Q. And do you have any opinions as to why the 16
17 text messages that exist on the -- that you found to
18 exist on the phone were dated between December 3rd and
19 December 8th as opposed to between November 2nd and
20 December 8th?

21 A. It is likely that those are messages that were
22 synchronized with the phone when it was turned back on
23 for a period of time, rather than messages that were
24 received periodically, but it is -- I would need to
25 spend more time with the device to -- to confirm that --

1 evidence that I have.

2 THE COURT REPORTER: Thank you.

3 BY MR. CRAMER:

4 Q. Let's move to Ken Neafcy -- well, strike that.

5 Before we do that, in the paragraph --- the
6 last paragraph of Fisher, it says that the iPhone 7 was
7 backed up by the City's vendor on February 22nd. At
8 that time, the last successful iCloud backup for the
9 iPhone 7 was on December 2nd, 2020.

10 What does that -- that -- where -- where do you
11 get the December 2nd, 2020 date?

12 A. From the ldbackup.plist configuration file.

13 Q. And is that what's listed in footnote 14?

14 A. That's correct.

15 Q. And then it says since the phone was not
16 configured to synchronize messages with iCloud, any
17 messages remaining on the phone as of December 2nd would
18 have been stored in the iCloud backup.

19 How do you know that the phone was not
20 configured to synchronize messages with iCloud?

21 A. The CloudKitSyncingEnabled was set to false at
22 the time that the phone was collected.

23 Q. So is it your opinion then that at some point
24 or -- strike that.

25 Was Mr. Fisher's iPhone 7 set to sync messages

1 on November 2nd as a result of the restoration on that
2 date?

3 A. Yes. I believe that's how the text messages
4 arrived onto the phone.

5 Q. And is there a date that you opine that the
6 synchronization was changed from Messages in iCloud to
7 not synced messages to iCloud?

8 A. At this time, I do not have that date.

9 Q. Okay. All right. And do you know whether the
10 synchronization would have been -- strike that.

11 Do you know what the -- the synchronization
12 status, the Messages in iCloud status would have been on
13 December 2nd, 2020?

14 A. Sitting here today, I don't know when Messages
15 in iCloud was turned off. I did not include that in my
16 report, but I could investigate further to determine
17 when it was turned off and as a result, know the status
18 of that setting when the last backup occurred on
19 December 2nd, 2020.

20 Q. And if the Messages in iCloud was enabled on
21 December 2nd, 2020, then the last successful iCloud
22 backup from that date would not include messages. Is
23 that a correct statement?

24 A. That's correct. They would -- they would be
25 available separately in the -- in the synchronized

1 portion of the iCloud account.

2 Q. Okay. And messages that are separately --
3 are -- strike that.

4 Messages that exist in the iCloud outside of a
5 backup, do those expire after 180 days?

6 A. If -- if they are turned off by the disable and
7 delete function and it is the last device synchronizing
8 with those messages, they would expire after 30 days.
9 But, again, it would have to be the last device, and it
10 appears he had other devices synchronizing this account.

11 Q. And if they were not though -- if it was not
12 the last device, would they expire after 180 days?

13 A. No. The -- the -- the 180 days relates to the
14 iCloud backup for a device that's no longer backing up
15 to the -- to that iCloud account.

16 Q. And if it was the last device, then it's your
17 testimony that they would have been deleted within -- or
18 later -- 30 days after the disable and delete function
19 was selected, which may or may not have been before
20 February 22nd, 2021, right?

21 A. That's correct.

22 Q. Okay. Okay. Let's move to Ken Neafcy.

23 You inspected two -- extractions from two
24 different Ken Neafcy iPhones; is that right?

25 A. That's correct.

1 them and related to information having been changed.
2 Other than that, I -- I don't know what -- what
3 transpired with Mr. Neafcy other than what I -- you just
4 showed me in the email exchange.

5 Q. And the -- the password or the -- do you know
6 what -- strike that.

7 Do you know why Mr. Neafcy received these two
8 emails in March of 2021?

9 A. I don't know the reason, but I do know that it
10 indicates that his password was changed and that his --
11 that a new iPhone XR was logged into his Apple account.

12 Q. On page 23 you say that if his iPhone XS was
13 backed up to his iCloud account before it was factory
14 reset on October 27th, that backup would have been kept
15 for 180 days and would still have been available when
16 data was collected from his iPhone 6S on March 1st,
17 2021.

18 Wouldn't that depend on the date that the
19 iPhone XS might have been backed up to his cloud account
20 before October 27th, 2020?

21 A. It would, and -- and my statement says if it
22 were backed up, I don't -- I don't know that it was or
23 when it was last backed up because that phone is -- was
24 factory reset.

25 Q. But if it were backed up before October 27th,

1 iPhone 11.

2 I'm -- I'm sorry. Please -- please give me one
3 second.

4 Yes, I don't have sufficient information in the
5 data that was provided to determine when it was first
6 backed up. I have information to indicate when the
7 iPhone 8 Plus was last backed up to iCloud, and that
8 appears to be the extractions that were provided, which
9 was February 13th 2021 and February 16th, 2021.

10 Q. So your statement in the section, "Assessment
11 of Forensic Extraction and Backups" that had -- had the
12 City collected data from Chief Scoggins' iCloud account
13 shortly after his iPhone Plus was factory reset on
14 October 8th, the messages lost due to the factory reset
15 may have been recovered.

16 That may or may not be true because you don't
17 know whether any such backups ever existed, correct?

18 MR. REILLY-BATES: Objection. Object to the
19 form. Misleading question.

20 A. And -- and that's the reason why I chose the
21 term "may have been recovered." I do not have
22 sufficient information. I do know that Chief Scoggins'
23 phones, both of them, were backed up to iCloud when they
24 were collected in 2021. I don't have sufficient
25 information to determine when that iCloud backup process

1 began.

2 Q. So you -- you don't have -- there's no evidence
3 on which you can testify that the City should have
4 obtained any iCloud backups shortly after October 8th,
5 2020 because there's no evidence that any such backups
6 even existed at that point, right?

7 MR. REILLY-BATES: Object to the form.
8 Argumentative.

9 A. I -- I would disagree. I -- the -- there was
10 knowledge that Mr. Scoggins lost his text messages and
11 that his phone was factory reset, and that -- if the
12 City were to recover those text messages, they would
13 have a limited time to be able to try to restore those
14 from his iCloud account.

15 BY MR. CRAMER:

16 Q. But you don't know whether there was a backup
17 from which to try to obtain those text --

18 A. We --

19 Q. -- text messages?

20 A. Neither of us know because we didn't look. I
21 mean, the City didn't look, so we didn't know if it
22 existed or not.

23 Q. Okay. So you -- so you don't he know whether
24 it existed?

25 A. I don't.

C E R T I F I C A T E

STATE OF DELAWARE)
) ss
NEW CASTLE COUNTY)

I, the undersigned Washington Certified Court Reporter, hereby certify:

That the foregoing deposition upon oral examination of the witness named herein was taken stenographically before me and transcribed under my direction;

That the witness was duly sworn by me pursuant to RCW 5.28.010 to testify truthfully;

That the transcript of the deposition is a full, true and correct transcript to the best of my ability;

That I am neither an attorney for, nor a relative or employee of any of the parties to the action or any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

I further certify that in accordance with CR 30(e), the witness was given the opportunity to examine, read, and sign the deposition, within 30 days upon its completion and submission, unless waiver of signature was indicated in the record.

Alisha Natasha Conley, RSR, CCR
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